

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

CLARK COUNTY CITIZENS UNITED, INC.,
FRIENDS OF CLARK COUNTY AND
FUTUREWISE,

Petitioners,

v.

CLARK COUNTY,

Respondent.

3B NORTHWEST LLC, CITY OF LA
CENTER, RDGB ROYAL FARMS LLC,
RDGK REST VIEW ESTATES LLC, RDGM
RAWHIDE ESTATES LLC, RDGF RIVER
VIEW ESTATES LLC, RDGS REAL VIEW
LLC, CITY OF BATTLE GROUND, AND
CITY OF RIDGEFIELD,

Intervenors.

CASE No. 16-2-0005c

**ORDER OF CONSOLIDATION, ORDER
ON INTERVENTION, AND
NOTICE OF HEARING AND
PRELIMINARY SCHEDULE**

I. THE PETITION

On August 25, 2015, Clark County Citizens United, Inc. (CCCU) filed a petition for review challenging Clark County's Comprehensive Plan Update as adopted by Ordinance 2016-06-12. The petition was assigned Case No. 16-2-0005. An earlier Petition for Review was filed on July 22, 2016, by Friends of Clark County and Futurewise; this case was assigned GMHB Case No. 16-2-0004. Both cases challenge Clark County's Comprehensive Plan Update as adopted by Clark County Ordinance 2016-06-12. On August 30, 2016 Respondent Clark County moved to consolidate GMHB Case Nos. 16-2-0004 and 16-2-0005 in accordance with RCW 36.70A.290(5).

II. CONSOLIDATION

RCW 36.70A.290(5) provides:

The board shall consolidate, when appropriate, all petitions involving the review of the same comprehensive plan or the same development regulation or regulations.

Pursuant to RCW 36.70A.290(5), the Board hereby consolidates Case Nos. 16-2-0004 and 16-2-0005. The case number for the new consolidated case will be **16-2-0005c**. The case will now be entitled **Clark County Citizens United, et al. v. Clark County**.

The consolidated case will proceed according to the schedule below, which shall replace the case schedule previously set for Case No.16-2-0004.

Nina Carter is the Presiding Officer. William Roehl and Cheryl Pflug will also serve on the panel to hear this matter.

III. INTERVENTION

The City of Ridgefield filed a Motion to Intervene on August 31, 2016. In accordance with the Board's rules, the City of Ridgefield contacted the other parties in this case and found no objections to the intervention.

The Board's Rules of Procedure at WAC 242-03-270 state:

- (1) Upon motion, any person may request status as an intervenor in a case. The motions shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties...
- (2) The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.
- (3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings ...

The Board finds that City of Ridgefield has an interest in this matter that may be impaired by the disposition of the case and may not be adequately represented by Clark

County (County). Intervention is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings. **The motion to intervene is Granted**, subject to the following conditions:

- (1) The City of Ridgefield intervenes on the side of the County and shall file and serve pleadings and briefs in accordance with the deadlines applicable to the County. **The County and Intervenor 3B Northwest LLC, City Of La Center, RDGB Royal Farms LLC, et al., City of Battle Ground, and City Of Ridgefield may file a joint brief or separate briefs, provided the total length does not exceed 40 pages, the length established for the County in the Prehearing Order.**¹ The parties are encouraged to combine or coordinate evidence and argument.
- (2) The City of Ridgefield may not raise new issues beyond those set forth in the prehearing order.
- (3) The County's time for oral argument at the hearing on the merits, as assigned by the Board, must be shared with the Intervenor 3B Northwest LLC, City of La Center, RDGB Royal Farms LLC, et al. and City of Ridgefield, as determined by the County.
- (4) Failure to file a brief or appear at hearing may be deemed a default.
- (5) The City of Ridgefield is entitled to notice of any settlement discussions that occur between the parties and may participate in such discussions. However, only Petitioners Friends of Clark County and Futurewise and Respondent Clark County need to be signatories to a stipulated dismissal of this case.

IV. PRELIMINARY SCHEDULE

In order to facilitate an efficient review of the issues presented, the Board asks that all of the Petitioners to the newly consolidated Case No. 16-2-0005c meet PRIOR to the upcoming Prehearing Conference to coordinate and consolidate their issues

¹ 16-2-0004 (Prehearing Order, August 23, 2016) at 3.

1 into a single revised issue statement. This revised issue statement must be sent to
2 the Board 24 hours before the prehearing conference.

3 Notice is given in the table below of the Preliminary Schedule for hearings as well as
4 for filing of briefs and documents with the Board. **Please also file your documents**
5 **electronically, in Word format, at western@eluh.wa.gov.**
6

7 8 V. PRELIMINARY SCHEDULE

9 July 22, 2016	16-2-0004 Petition Filed
10 August 25, 2016	16-2-0005 Petition Filed
11 September 6, 2016	Notice of Hearing and Preliminary Schedule
12 September 8, 2016	Revised Issue Statement ²
13 September 14, 2016 10:00 AM	Telephonic Prehearing Conference – Call 1 (800) 704-9804 and use pin 7567592#
14 September 16, 2016	Prehearing Order ³
15 September 26, 2016	Index Due (Respondent to file)
16 October 3, 2016	Additions to Index (parties to confer)
17 October 10, 2016	Deadline for Dispositive Motions and for Motions to 18 Supplement the Record (proposed supplements to be 19 attached)
20 October 20, 2016	Deadline for Response to Dispositive Motions or Motions 21 to Supplement the Record
22 October 31, 2016	Anticipated date of Order on Motions
23 November 14, 2016	Deadline for Petitioners' Prehearing Brief (with exhibits)
24 December 5, 2016	Deadline for Respondent's Prehearing Brief (with exhibits)
25 December 19, 2016	Deadline for Petitioners' Reply Brief (optional)
26 January 12, 2017 10:00 AM	Hearing on Merits of Petition Location to be determined
27 February 21, 2017	Final Decision and Order

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31 ² WAC 242-03-260(1). A petition for review may be amended as a matter of right until fourteen days after its
32 date of filing. Any such amendments shall be limited to amending the legal bases for challenging the matters
raised in the original petition, but may not raise new challenges to the ordinance.

³ WAC 242-03-545(2). Any objection to such order shall be made in writing within seven days after the date the
order is dated.

VI. PREHEARING CONFERENCE

At the Prehearing Conference, the parties should be prepared to discuss the action being challenged, the nature of the claims asserted in the Petition for Review, and the framing of the legal issues to be decided.

The Respondent should be prepared to indicate the nature of any dispositive motions it intends to file. The parties are advised that the Board will normally only decide the following issues on motions: timeliness of the filing of the petition for review, standing to raise the claims in the petition, and subject-matter jurisdiction. The Presiding Officer may ask for stipulations concerning threshold matters that are not in dispute, if any.

The case schedule will be discussed at the prehearing conference and may be modified to fit the needs of the parties insofar as the Board determines it can reasonably accommodate them and meet its statutory deadlines. Thereafter, any changes to the schedule must be proposed by motion.

VII. RULES OF PROCEDURE

The Board's Rules of Practice and Procedure, found in the Washington Administrative Code (WAC) at Chapter 242-03 WAC, shall apply to the proceedings in this case.⁴

VIII. SETTLEMENT AND MEDIATION

Prior to the prehearing conference the Board expects the parties to engage in at least one settlement discussion. At the prehearing conference, the parties will report on their interest in further settlement discussions. If the parties agree that a member of the Growth Management Hearings Board who is not on the designated panel could be of assistance by serving as a settlement officer, the Presiding Officer will appoint a settlement officer to assist the parties in resolving any or all of the issues presented in the Petition for Review. If the parties reach settlement, the Presiding Officer shall be notified, and a Joint Motion for Dismissal filed with the Board. If settlement is not reached on all issues, the case

⁴ The Board's handbook, available on the website, may also be useful to the parties.

1 will proceed as scheduled. The parties are advised that the Board may extend the 180-day
2 decision deadline for the purposes of settlement, for up to ninety days pursuant to RCW
3 36.70A.300(2)(b).
4

5 **IX. INTERPRETERS AND ACCOMMODATIONS**

6 If a limited-English speaking or hearing impaired party needs an interpreter for any
7 hearing, a qualified interpreter will be appointed at no cost to the party or participant. A form
8 for a request for an interpreter is attached to this Notice.
9

10 **X. THE INDEX**

11 **Index** - Pursuant to WAC 242-03-510, within 30 days of service of the petition the
12 Respondent shall prepare an Index that lists all documents considered by the Respondent
13 in taking the challenged action. Each document included in the Index should be given a
14 unique number for identification purposes and to avoid duplication. Thereafter documents
15 should be referenced by their index number when attached as exhibits to briefs.
16

17 The Petitioners shall review the Index prepared by the Respondent promptly and
18 notify the Respondent of any omissions they believe have occurred. If the Respondent
19 agrees, it shall file an Amended Index.
20

21 If there is a disagreement over whether the item should be included in the record, the
22 proponent may file a motion to supplement the record, attaching the disputed documents
23 and explaining why the party believes the document is necessary or of substantial
24 assistance in the determination of the issues. Supplementation may be permitted "if the
25 board determines that such additional evidence would be necessary or of substantial
26 assistance to the board in reaching its decision." RCW 36.70A.290(4).
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28 **XI. EXHIBITS**

29 The Index shall contain a list of all of the documents considered by the Respondent
30 in taking the challenged action. However, only those documents that are presented to the
31 Board as exhibits are part of the evidence. To become part of the evidence, an exhibit must
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1 be presented to the Board as an exhibit to a brief or motion and so marked. **Exhibits shall**
2 be attached to the brief in which they are referenced and shall **include the Index**
3 **number(s) from which they are drawn. A table of exhibits is required for the hearing**
4 **briefs. Parties shall tab the exhibits for the benefit of Board members using the**
5 **appropriate index number.**
6

7 **XII. FAILURE TO ATTEND OR PARTICIPATE**

8 A party who fails to attend or participate in any hearing or other stage of the
9 adjudicative proceedings before the Board in this case may be held in default and an order
10 of default or dismissal may be entered pursuant to WAC 242-03-710.
11

12 **XIII. COMMUNICATION WITH THE BOARD**

13 Pursuant to RCW 34.05.455, the parties may not communicate ex parte with the
14 presiding officer or other Board members. The parties are directed to Ms. Lynn Eccles,
15 Administrative Assistant to the Board, at (360) 664-9170, or email at
16 western@elaho.wa.gov, who shall be the Board's contact for any questions.
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18

19 DATED this 6th of September, 2016.
20

21 _____
22 Nina Carter, Presiding Officer
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1 **INTERPRETER REQUEST**

2
3 **Case No. 16-2-0005c**

4 **Clark County Citizens United, Inc., et al. v. Clark County**

5 I request that an interpreter be present as follows (Please circle as appropriate):

- 6
7 1. Limited English-speaking ability. My primary language is _____
8 (Indicate language)
9 2. Hearing impaired.

10
11 Dated this _____ day of _____ 2016.

12
13
14 Signature: _____
15 Party

16
17 **Mail to:**

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19 **Growth Management Hearings Board**
20 **P.O. Box 40953**
21 **Olympia, WA 98504-0953**
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